IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.495 OF 2006

Dhanaji Bapurao Desai & anr. Petitioners

versus

B.G.Desai V.K.S.Society & ors. Respondents

S.S.Patwardhan for petitioners.

P.D.Dalvi for respondents 1 to 3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. Heard Shri Patwardhan for the petitioners and Shri Dalvi for the respondents. By this petition under Article 227 of Constitution of India are challenging the refusal of the Courts below in granting an interim order in their favour in the dispute which is presently pending in the Co-operative Court.

2. Shri Patwardhan urges that the Co-operative Appellate Court was in error in observing the co-option on the Managing Committee can be done

only by a Managing Committee and not by the General Body of the society. He invites my attention to the bye-laws on the subject of co-option and Section 72 of the Maharashtra Co-operative Societies Act. In his submission, the final authority of every society rests in the General Body of members in general meeting and therefore the finding of the Lower Appellate Court is ex-facie erroneous

3. It is not necessary to pronounce upon the prima facie observation of the Co-operative Appellate Court with regard to co-option of the petitioners. That issue is kept open for being urged in the dispute and the observations of the Co-operative Appellate Court at a prima facie stage would not bind the Trial Court in either entertaining the submissions on this issue or dealing with the same on merits and in accordance with law.

4. However, the Lower Appellate Court was right in rejecting the appeal as the petitioners failed to make out a prima facie case. The Trial Court upon materials has recorded a prima facie finding that the meeting dated 19th August 2005, does not appear to have been held at all. The events

which led to the dispute being filed and the rival group meeting and removing the Secretary have been noted by both Courts after perusing the documents produced by both sides.

5. A finding of fact of the above nature does not require interference by this Court. Moreso, when it is not permissible to reappreciate and reappraise the materials which have been produced by the contesting parties. Petition dismissed.

6. All observations of the Courts below are prima facie and shall not influence the Trial Court while finally deciding the dispute. Petition dismissed.

(S.C.DHARMADHIKARI, J.)